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Fact Sheet

Presidential Directive on Safeguarding National Security Information

Background

- Unlawful disclosures of classified information damage national security by providing valuable information to our adversaries, by hampering the ability of our intelligence agencies to function effectively, and by impairing the conduct of American foreign policy.
- The President has issued a directive requiring that additional steps be taken to protect against unlawful disclosures of classified information.
- This directive is based on the recommendations of an inter-departmental group convened by the Attorney General.

Scope of Directive

- The directive deals only with disclosures of classified information.
- By Executive Order, the only information that can be classified is information which "reasonably could be expected to cause damage to the national security" if released without proper authorization. (E.O. 12356 § 1.1(a)(3).)
- The Executive Order also prohibits the use of classification to conceal violations of law, inefficiency or administrative error, or to prevent an embarrassment to a government agency or employee. (E.O. 12356 § 1.6(a).)

Summary of Provisions

- The directive imposes additional restrictions upon government employees who are entrusted with access to classified information, and upon government agencies that originate or handle classified information.
 - More employees will be required to sign nondisclosure agreements, including provisions for prepublication review, such as were approved by the Supreme Court in United States v. Snepp (1980).

Agencies will be required to adopt policies concerning contacts between journalists and persons with access to classified information, so as to reduce opportunities for unlawful disclosures. However, no particular policies are mandated in the directive.

- Agencies will be required to adopt new procedures so that unlawful disclosures of classified information will be reported and analyzed more efficiently.
- The directive establishes a new approach to investigating unlawful disclosures to replace the past practice of treating such matters as purely criminal investigations.
 - Although unauthorized disclosures of classified information potentially violate a number of criminal statutes, there has never been a successful prosecution. There are a number of practical barriers to successful criminal prosecution in most of these cases.
 - This directive clarifies FBI's authority to investigate unlawful disclosures of classified information, even though it is anticipated that a successful investigation will lead to administrative sanctions (such as demotion or dismissal) rather than criminal prosecution.
 - All agencies with employees having access to classified information will be required to assure that their policies permit use of polygraph examinations under carefully defined circumstances. The polygraph is already used on a regular basis by our largest intelligence agencies. The directive provides for a greater degree of consistency in government-wide policy regarding use of this investigative technique.
 - The use of the polygraph in any particular case will be subject to the discretion of an employee's agency head.
 - There will be no change in the current practice of targeting investigations at employees who are suspected of unlawfully disclosing classified information, rather than at journalists who publish it.

- The directive provides that employees found by their agency head to have knowingly disclosed classified information without authorization or to have refused cooperation with investigations will be subject to mandatory administrative sanctions to include, as a minimum, denial of further access to classified information. Existing procedural safeguards for personnel actions involving federal employees remain unchanged.

Expected Results

- This directive is not expected to eliminate all unlawful disclosures of classified information.
- The directive is designed to improve the effectiveness of our present program and, over time, to reduce the frequency and seriousness of unlawful disclosures of classified information.
- The directive also emphasizes that government employees who are entrusted with classified information have a fiduciary duty to safeguard that information from unauthorized disclosure.

Questions and Answers

Presidential Directive on
Unlawful Disclosures of Classified Information

(1) What specific laws are violated by the unauthorized disclosure of classified information?

Depending upon the facts and circumstances, unauthorized disclosure of classified information may violate one or more of the following criminal statutes. 18 U.S.C. 793(d)&(e) (Espionage Act); 18 U.S.C. 798 (communications intelligence); 42 U.S.C. 2274, 2277 ("restricted data" under Atomic Energy Act); 50 U.S.C. 783(b) (disclosure to foreign agents); 18 U.S.C. 641 (theft of government property).

In addition, such disclosure violates Executive Order 12356 (which in this regard is identical to executive orders in effect under every President since Franklin Roosevelt). Congress and the courts have recognize that such executive orders implement the President's authority to safeguard national security information. Under such circumstances, the executive order has the force and effect of law.

(2) Why are the Secrecy Agreements relating to Sensitive Compartmented Information (SCI) the only Agreements that contain a prepublication review provision?

SCI is intelligence information that is considered the most sensitive. Its high degree of sensitivity is indicated by the fact that access to such information is greatly compartmented. Since SCI is so sensitive, and since the number of persons who have access to collateral classified information, the imposition of more stringent security requirements, like prepublication review, is desirable as well as practical.

(3) Why doesn't the NSDD set forth specific policies to govern media contacts, rather than providing individual government agencies with the discretion to establish "appropriate policies?"

Each government agency has its own particular organizational and functional characteristics, so it would be difficult to develop a single, uniform program in this area to apply throughout government.

agency to focus on the need for each agency to develop a specific program, appropriate to its own characteristics and circumstances, to reduce the opportunities for negligent or deliberate unlawful disclosures to the media.

(4) What kind of policies governing media contacts are contemplated?

That would be up to each agency and each agency would have to take into account its own particular problems. But, any regulation would be designed not to act as a gag on all press contacts, but only to ensure that classified information is not lost.

(5) Why wouldn't such policies violate the First Amendment?

The First Amendment does not give journalists any right of access to classified information. These policies would only prevent the unlawful disclosure of classified information to any journalist. They would in no way constitute a prior restraint upon a journalist's ability to publish any story he or she may wish to publish.

(6) Does the NSDD represent an effort to delegate Department of Justice prosecutorial discretion to other government agencies in the area of developing criteria for the evaluation and prioritization of unlawful disclosures?

No. It is not the intent of the NSDD to delegate any Department of Justice prosecutorial discretion to any other agency. Since the Department of Justice must allocate scarce investigative resources, some system for evaluating and prioritizing unlawful disclosures will be necessary to ensure that the less serious and damaging unlawful disclosures don't receive investigative attention at the expense of more serious and damaging unauthorized disclosures. The Department of Justice believes that it is prudent to consult with the agencies most affected by unlawful disclosures and which have the greatest expertise in order to allocate investigative resources effectively and efficiently.

(7) Isn't the investigation of unauthorized disclosures by the FBI unlawful and improper when criminal prosecution is not contemplated?

No. Among other things, the FBI is authorized to investigate possible violations of federal criminal law. There is no requirement that a decision to prosecute be made in advance of the investigation. The NSDD clarifies the FBI's authority in this area, so that there will be no question that FBI can investigate unlawful disclosures in any case where investigation is desirable and practical.

(7a) Does this directive mandate the use of polygraphs in certain circumstances?

It does not. It requires, simply, that agency regulations permit the use of polygraphs, at the discretion of the agency.

(8) Why does the NSDD authorize use of the polygraph?

The polygraph is an important and useful investigative tool for looking into unauthorized disclosures. However, it is not the only element in the investigative process. The NSDD anticipates that polygraph examinations will be used in conjunction with other investigative techniques to sharpen the overall investigative effort and that it will not be used to supplant any other investigative techniques. In fact, the NSDD specifically prohibits reliance on polygraph-derived information to the exclusion of information obtained by other investigative techniques.

(9) What kind of penalty will be imposed on employees who refuse to take the polygraph?

Failure to comply with the polygraph requirement may result in "adverse consequences," the exact extent of which would depend upon the facts and circumstances of the particular case. For example, such refusal could form the basis for an adverse evidentiary inference, which--taken along with all other evidence produced by an investigation--could lead to administrative sanctions such as loss of security clearances. Most employees would enjoy certain procedural rights (such as an evidentiary hearing) in the event of adverse personnel actions such as demotion or dismissal. The precise application of this policy will be largely determined on a case-by-case basis at the discretion of the employing agency.

(10) Does the government have the legal authority to conduct polygraph examinations?

Yes. Under the current state of the law, there are not federal statutes that would prohibit the conduct of polygraph examinations by the government as provided in this directive.

(11) Does this directive apply to the White House?

Yes, it does, and the Chief of Staff to the President will monitor its implementation in the White House office.

BACKGROUND BRIEFING

ON

SAFEGUARDING NATIONAL SECURITY INFORMATION

DEPARTMENT OF JUSTICE
CONFERENCE ROOM B

1
2 QUESTION: CAN YOU GIVE US A LITTLE BACKGROUND ON
3 WHO THE INTERDEPARTMENTAL GROUP WAS AND WHEN THIS ORDER WAS
4 SIGNED?

5 ADMINISTRATION OFFICIAL: THE DIRECTIVE WAS SIGNED
6 BY THE PRESIDENT THIS MORNING, I UNDERSTAND. THE INTER-
7 DEPARTMENTAL GROUP WAS CONVENED BY THE ATTORNEY GENERAL AT
8 THE REQUEST OF THE PRESIDENT'S NATIONAL SECURITY ADVISOR
9 JUDGE CLARK LAST YEAR AND INCLUDED ON THE INTERDEPARTMENTAL
10 WERE REPRESENTATIVES OF THE DEPARTMENT OF STATE, DEPARTMENT
11 OF THE TREASURY, DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY
12 AND THE DIRECTOR OF CENTRAL INTELLIGENCE.

13 QUESTION: WAS ANYBODY FROM THE FBI ON THAT?

14 ADMINISTRATION OFFICIAL: NO. THEIR PARTICIPATION
15 WAS THROUGH THE JUSTICE DEPARTMENT REPRESENTATIVE.

16 QUESTION: WHO WAS THAT?

17 ADMINISTRATION OFFICIAL: THAT WAS ME.

18 QUESTION: CAN YOU TELL US WHAT AGENCIES ARE COVERED
19 BY THIS DIRECTIVE?

20 ADMINISTRATION OFFICIAL: THE DIRECTIVE APPLIES TO
21 ALL AGENCIES IN THE GOVERNMENT THAT HANDLE OR ORIGINATE
22 CLASSIFIED INFORMATION.

1 QUESTION: THE FACT SHEET SAYS THAT MORE EMPLOYEES
2 WILL BE REQUIRED TO SIGN NONDISCLOSURE AGREEMENTS. CAN YOU
3 TELL US WHO IS NOW REQUIRED TO SIGN SUCH AGREEMENTS AND WHO
4 IN ADDITION WILL BE REQUIRED TO SIGN SUCH AGREEMENTS?

5 ADMINISTRATION OFFICIAL: NOW THERE IS NOW GOVERNMENT-
6 WIDE REQUIREMENT ON SIGNING NONDISCLOSURE AGREEMENTS, IT'S
7 LEFT UP TO EACH AGENCY. SOME AGENCIES REQUIRE IT, OTHERS
8 DON'T.

9 QUESTION: WHICH ONES DON'T?

10 QUESTION: OTHER THAN THE CIA, WHO DOES?

11 ADMINISTRATION OFFICIAL: MOST AGENCIES HAVE SOME
12 KIND OF AGREEMENT. THE JUSTICE DEPARTMENT, FOR EXAMPLE,
13 HAS A KIND OF NONDISCLOSURE AGREEMENT THAT EMPLOYEES SIGN
14 WHEN THEY'RE INDOCTRINATED FOR ACCESS TO CLASSIFIED INFORMATION
15 BUT AS TO EXACTLY WHICH ONES DO AND DON'T, I DON'T KNOW. I DO
16 UNDERSTAND THE DEPARTMENT OF DEFENSE DOES NOT UNIFORMLY
17 HAVE SUCH AN AGREEMENT.

18 QUESTION: AS I READ THIS, THIS WILL ALLOW AGENCIES
19 TO REQUIRE EMPLOYEES TO TAKE LIE DETECTOR TESTS. IS THAT AN
20 ACCURATE READING?

21 ADMINISTRATION OFFICIAL: THE ORDER WILL PRODUCE
22 SOMEWHAT GREATER CONSISTENCY IN OUR GOVERNMENT POLICY ON THAT

1 SO THAT AGENCIES CAN TAKE APPROPRIATE ADVERSE STEPS IF THEY
2 DETERMINE TO DO SO IF AN EMPLOYEE DOES NOT AGREE TO TAKE A
3 POLYGRAPH EXAMINATION UNDER SOME CAREFULLY LIMITED CIRCUM-
4 STANCES.

5 QUESTION: WHAT MIGHT THOSE STEPS BE, IF THAT'S ALL
6 YOU HAVE, YOU DON'T HAVE ANYTHING TO SUSPECT THAT THAT PERSON
7 IS THE SOURCE OF A LEAK BUT THEY ABSOLUTELY, UNEQUIVOCALLY
8 REFUSE TO TAKE A TEST, COULD THAT LEAD TO A DISMISSAL?

9 ADMINISTRATION OFFICIAL: THAT IS TO BE CONSIDERED
10 IN THE CONTEXT OF ALL THE OTHER INFORMATION AVAILABLE. THE
11 DIRECTIVE REQUIRES THAT THE POLYGRAPH BE USED IN CONJUNCTION
12 WITH ALL OTHER INVESTIGATORY TECHNIQUES.

13 IN AN INDIVIDUAL CASE, IT MIGHT DEPEND ON THE REASON
14 WHY THE EMPLOYEE REFUSED TO TAKE IT AND WHETHER ANY KIND OF
15 INFERENCE CAN BE DRAWN THAT IT IS CONNECTED WITH THE
16 UNAUTHORIZED DISCLOSURE THAT'S UNDER INVESTIGATION.

17 QUESTION: DOES THIS NOT GIVE AUTHORITY TO SOME
18 EXECUTIVE BRANCH OFFICIALS TO DISMISS AN EMPLOYEE WHO SAYS
19 "I DO NOT WANT TO TAKE THE TEST?"

20 ADMINISTRATION OFFICIAL: THE AUTHORITY IS ALREADY
21 THERE IN MANY AGENCIES. CIA AND NSA, FOR EXAMPLE, DOESN'T
22 EVEN HIRE PEOPLE UNTIL THEY TAKE POLYGRAPH EXAMINATIONS

1 AND THEY PERIODICALLY GIVE THEM, AND THEY HAVE THAT AUTHORITY
2 NOW. OTHER AGENCIES IN THE EXECUTIVE BRANCH HAVE A VARIETY
3 OF POLICIES. THE POLICY PROVIDED HERE BY THE PRESIDENT AS
4 A MINIMUM IS THE POLICY THAT IS NOW IN EFFECT HERE AT THE
5 DEPARTMENT OF JUSTICE WITH REGARD TO ATTORNEYS THAT WAS
6 CLARIFIED IN 1980 BY ATTORNEY GENERAL CIVILETTI, AND THAT
7 IS THAT IN THE CONTEXT OF AN INVESTIGATION OF AN UNAUTHORIZED
8 DISCLOSURE OF CLASSIFIED INFORMATION THEY CAN BE GIVEN --

9 QUESTION: IT WOULD SEEM THAT, YES, IT IS EXPANDING
10 THE RULES TO COVER MORE EMPLOYEES BUT STILL AN EMPLOYEE COULD
11 BE DISMISSED BECAUSE THE ADMINISTRATION OFFICIAL FEELS THAT
12 HE SHOULD HAVE TAKEN THE TEST AND HE DIDN'T.

13 ADMINISTRATION OFFICIAL: THE REQUIREMENT IS THAT
14 THE RESULTS OR THE INFERENCES DRAWN FROM REFUSING TO TAKE IT
15 BE CONSIDERED IN THE CONTEXT OF EVERYTHING ELSE. IT IS TRUE
16 THAT AN EMPLOYEE WHO DOES REFUSE TO TAKE A POLYGRAPH EXAMINATION
17 MAY ULTIMATELY BE SUBJECTED TO ADMINISTRATIVE SANCTIONS TO
18 INCLUDE DISMISSAL IF, IN THE LIGHT OF ALL THE OTHER FACTS
19 AND CIRCUMSTANCES, THE HEAD OF THE AGENCY DETERMINES TO DO SO
20 BUT THAT IS NOT TO BE THE ONLY FACTOR THAT IS CONSIDERED.

21 ALSO, THERE IS NO CHANGE IN EXISTING PROCEDURAL
22 SAFEGUARDS THAT EMPLOYEES ENJOY WITH REGARD TO PERSONNEL

1 ACTIONS SO THAT THE EXISTING PROCEDURES WOULD HAVE TO BE
2 FOLLOWED BEFORE A DISMISSAL COULD OCCUR.

3 QUESTION: WHAT ARE THOSE? DO YOU MEAN JUST
4 CIVIL SERVICE PROCEDURES?

5 ADMINISTRATION OFFICIAL: IT VARIES, DEPENDING
6 ON WHAT KIND OF EMPLOYEE YOU HAVE, WHETHER YOU HAVE A
7 COMPETITIVE SERVICE OR A SCHEDULE A OR A SCHEDULE C, FOR
8 EXAMPLE.

9 QUESTION: IT DOES SAY, HOWEVER, THAT REFUSAL TO
10 COOPERATE WAS SUBJECT TO A MANDATORY MINIMUM OF DENIAL OF
11 FURTHER ACCESS AND CIVILETTI'S POLICY DIDN'T HAVE A MANDATORY
12 MINIMUM OF DENIAL OF FURTHER ACCESS IF YOU REFUSE.

13 ADMINISTRATION OFFICIAL: THAT'S RIGHT. IT JUST
14 SAID THAT ADVERSE INFERENCES COULD BE DRAWN.

15 QUESTION: COULD BE DRAWN IF THE REFUSAL WAS
16 COMBINED WITH OTHER FACTS AND CIRCUMSTANCES.

17 ADMINISTRATION OFFICIAL: THAT'S RIGHT.

18 QUESTION: YOU SORT OF RESTATED THAT A LITTLE BIT
19 HERE.

20 ADMINISTRATION OFFICIAL: WELL, THE DIRECTIVE SAYS
21 THAT REFUSAL TO COOPERATE WITH AN INVESTIGATION WILL BE. THE
22 QUESTION OF WHAT IS REFUSAL TO COOPERATE IS SOMETHING THAT

1 EACH AGENCY CAN STILL DETERMINE UNDER THE FACTS AND
2 CIRCUMSTANCES OF THE CASE. IT'S NOT EXPECTED THAT POLYGRAPHS
3 ARE GOING TO BE A PART OF EVERY INVESTIGATION OR THAT IF
4 SOMEONE REFUSES FOR A GOOD REASON NOT TO TAKE THE POLYGRAPH
5 THAT THE AGENCY WOULD HAVE TO DETERMINE THAT THAT'S A REFUSAL
6 TO COOPERATE.

7 QUESTION: YOU SAID SOMETHING THAT THE ORDER
8 DOESN'T EXACTLY SAY, THAT THE POLYGRAPH ALONE COULDN'T BE
9 THE SOURCE OF DISCIPLINE. THAT IS THE CIVILETTI POLICY,
10 BUT THE PRESIDENT'S ORDER DOESN'T SEEM TO QUITE SAY THAT.
11 IT SAYS THAT ADVERSE CONSEQUENCES WILL FOLLOW AN EMPLOYEE'S
12 REFUSAL TO COOPERATE WITH A POLYGRAPH AND THEN IT SAYS
13 RESULTS OF POLYGRAPHS SHOULD NOT BE RELIED ON TO THE
14 EXCLUSION BUT IT DOESN'T REALLY SAY IT COULDN'T BE.

15 ADMINISTRATION OFFICIAL: WELL, THE DIRECTIVE SETS
16 MINIMUM STANDARDS AND IT SAYS ADVERSE CONSEQUENCES. WHAT
17 THOSE CONSEQUENCES ARE REMAINS UP TO THE AGENCY TO DETERMINE.
18 IN MANY CASES IT MAY BE SIMPLY AN ADVERSE EVIDENTIARY INFERENCE,
19 THAT IS, THE FACT WOULD BE NOTED AND PUT IN THE FILE ALONG
20 WITH THE REST OF THE INFORMATION FROM THE INVESTIGATION.
21 THAT DOESN'T HAVE TO MEAN THAT ANYTHING BAD IS GOING TO HAPPEN
22 TO THE EMPLOYEE BECAUSE IN THE CONTEXT OF EVERYTHING ELSE,

1 IT MAY --

2 QUESTION: YOU COULD HAVE SOMETHING BAD, IT'S IN
3 HIS PERSONNEL FILE. NOW, HOW ABOUT IF THE EMPLOYEE GIVES
4 THIS AS A GOOD REASON: "POLYGRAPHS ARE NOT ALWAYS RELIABLE.
5 OF COURSE, THEY CAN'T BE USED IN FEDERAL COURT AS EVIDENCE
6 IN CRIMINAL CASES SO I REFUSE TO TAKE A POLYGRAPH SOLELY
7 ON THE GROUND THAT IT'S NOT RELIABLE." IS THAT CONSIDERED A
8 GOOD REASON?

9 ADMINISTRATION OFFICIAL: IT'S UP TO THE AGENCY
10 HEAD TO DETERMINE, BASED ON THE FACTS AND CIRCUMSTANCES.

11 QUESTION: WHAT WOULD YOU DETERMINE IF YOU SAID
12 I'M GOING TO GIVE YOU A POLYGRAPH, YOU'RE AN EMPLOYEE OF
13 JUSTICE, AND I SAID I WON'T TAKE A POLYGRAPH UNDER ANY
14 CIRCUMSTANCES BECAUSE THEY ARE NOT RELIABLE ENOUGH. WOULD
15 YOU SAY THAT'S A GOOD REASON?

16 ADMINISTRATION OFFICIAL: IT WOULD DEPEND ON WHAT
17 OTHER EVIDENCE IS AVAILABLE. THE POINT IS THAT THAT REFUSAL
18 SHOULD BE ONE FACT THAT'S ANALYZED WITH EVERYTHING ELSE.
19 IF THERE IS AN ABUNDANCE OF ADDITIONAL EVIDENCE INDICATING
20 THAT THE EMPLOYEE DID IN FACT UNLAWFULLY DISCLOSE CLASSIFIED
21 INFORMATION, THEN YOU MIGHT NOT BELIEVE HIM IF HE SAYS THE
22 REASON HE'S REFUSING IT IS BECAUSE OF THIS.

1 QUESTION: IN THE ABSCAM LEAK INVESTIGATION THERE
2 WERE SOME HIGH OFFICIALS OF THE FBI WHO DID NOT WANT TO TAKE
3 POLYGRAPH TESTS BECAUSE THEY FIRMLY BELIEVED THAT THEY WERE
4 NOT RELIABLE, OFFICIALS WHO HAD NOTHING TO DO WITH THE LEAK.
5 THEY APPARENTLY WERE NEVER ASKED TO TAKE THE TEST. NOW,
6 SUPPOSE THEY HAD BEEN AND THEY SAID, "LOOK, WE'VE WATCHED
7 THESE POLYGRAPH TESTS OVER THE YEARS, THEY'RE NOT RELIABLE,
8 WE'RE NOT GOING TO TAKE IT." WOULD THAT BE AN ADVERSE
9 INFERENCE IN THE FBI OFFICIAL'S FILE BECAUSE HE SAID HE
10 WASN'T GOING TO TAKE IT? WHAT IS YOUR FEELING ABOUT THIS
11 RELIABILITY OF THE POLYGRAPH TEST? LET'S PUT IT THAT WAY.

12 ADMINISTRATION OFFICIAL: WELL, THE POINT IS THAT
13 IT DEPENDS A LOT ON WHETHER YOU BELIEVE THAT THE PERSON IS
14 SINCERE WHEN HE STATES THAT THAT'S THE REASON THEY'RE REFUSING
15 TO TAKE THE TEST OR WHETHER THEY'RE REFUSING TO TAKE THE
16 TEST BECAUSE THEY THINK IT WOULD INCRIMINATE THEM.

17 QUESTION: HOW DO YOU DETERMINE THAT, GIVE HIM A
18 POLYGRAPH TO FIND OUT IF HE'S SINCERE?

19 ADMINISTRATION OFFICIAL: YOU LOOK AT ALL THE OTHER
20 AVAILABLE EVIDENCE. IF THERE IS OTHER EVIDENCE THAT INDICATES
21 THAT THIS EMPLOYEE DID IN FACT UNLAWFULLY DISCLOSE CLASSIFIED
22 INFORMATION, THEN THAT'S ONE MORE FACT THAT CAN BE ADDED TO

1 IT. THAT'S WHAT IT MEANS WHEN I SAY ADVERSE EVIDENTIARY
2 INFERENCE. IT'S ONE MORE FACT THAT CAN BE CONSIDERED.

3 QUESTION: THIS WOULD BE USED LAST INSTEAD OF FIRST,
4 THE POLYGRAPH?

5 ADMINISTRATION OFFICIAL: YES.

6 QUESTION: CAN EITHER OF YOU GENTLEMEN PROVIDE ONE
7 OR TWO CONCRETE EXAMPLES TO BACK UP THE FIRST STATEMENT IN
8 THE FACT SHEET THAT UNLAWFUL DISCLOSURES DAMAGE NATIONAL
9 SECURITY BY PROVIDING VALUABLE INFORMATION FOR ADVERSARIES,
10 ET CETERA? CAN YOU PROVIDE ONE OR TWO EXAMPLES OF CONCRETE
11 DAMAGE TO NATIONAL SECURITY OR HAMPERING THE ABILITY?

12 ADMINISTRATION OFFICIAL: NO, WE CAN'T DO THAT FOR
13 TWO REASONS. ONE IS THAT WHEN WE OFFICIALLY CONFIRM
14 INFORMATION THAT HAS BEEN DISCLOSED IN THIS MANNER, IT
15 COMPOUNDS THE DAMAGE. WHEN CLASSIFIED INFORMATION IS
16 DISCLOSED THROUGH A LEAK, THERE MAY BE SOME UNCERTAINTY
17 AS TO WHETHER IT'S ACCURATE OR NOT. IF THE GOVERNMENT OFFICIALLY
18 CONFIRMS THAT IT'S ACCURATE, THAT IT WAS CLASSIFIED
19 INFORMATION, THAT MAKES THE DAMAGE WORSE THAN IT ALREADY
20 WAS.

21 IN THE SECOND PLACE, EXPLAINING HOW ONE OF THESE
22 DISCLOSURES DAMAGES NATIONAL SECURITY CAN IN ITSELF INVOLVE

1 ADDITIONAL CLASSIFIED INFORMATION. FOR EXAMPLE, HIGHLIGHTING
2 EXACTLY WHY A PARTICULAR PIECE OF INFORMATION IS SENSITIVE OR
3 WHAT FURTHER DAMAGE IT CAUSES. WE HAVE CONSIDERED THIS
4 QUESTION AND ARE NOT ABLE TO PROVIDE ANY EXAMPLES FOR
5 THOSE REASONS.

6 QUESTION: IS THERE ANYTHING IN THESE DIRECTIVES
7 THAT PROVIDE FOR AN EMPLOYEE TO HAVE A LAWYER OR IN ANY
8 OTHER WAY PROTECT THEIR CONSTITUTIONAL RIGHTS AGAINST SELF-
9 INCRIMINATION?

10 ADMINISTRATION OFFICIAL: THESE DIRECTIVES DO NOT
11 CHANGE THE CURRENT POLICIES IN THAT AREA AND I'M AFRAID I
12 CAN'T DESCRIBE IN DETAIL EXACTLY UNDER WHAT CIRCUMSTANCES
13 THAT APPLIES.

14 QUESTION: WHY NOT?

15 ADMINISTRATION OFFICIAL: I THINK IT'S A COMPLICATED
16 QUESTION, DEPENDING ON WHAT KIND OF INVESTIGATION IS BEING
17 CONDUCTED, WHO THE EMPLOYEE IS, AND WHAT THE NATURE OF IT IS.

18 QUESTION: SOMEBODY WHO HAS BEEN ASKED TO TAKE A
19 POLYGRAPH TEST, DOES HE HAVE A RIGHT TO HAVE A LAWYER WITH
20 HIM, DOES HE HAVE THE RIGHT TO CONSULT A LAWYER?

21 ADMINISTRATION OFFICIAL: WELL, FIRST OF ALL, I
22 BELIEVE AN EMPLOYEE ALWAYS HAS THE RIGHT TO CONSULT A LAWYER

1 IF HE WANTS TO. THE QUESTION AS TO WHETHER A LAWYER CAN BE
2 PRESENT DURING THE EXAMINATION, I DON'T KNOW.

3 QUESTION: I JUST WANT TO GO BACK TO --

4 ADMINISTRATION OFFICIAL: LET ME JUST THINK FOR A
5 MINUTE. I DON'T SEE WHY THE EMPLOYEE SHOULDN'T BE ABLE TO
6 HAVE A LAWYER PRESENT, BUT I DON'T KNOW THAT FOR SURE, DURING
7 A POLYGRAPH EXAMINATION, BUT I JUST DON'T KNOW FOR SURE.

8 QUESTION: YOU IDENTIFIED THREE AGENCIES WITH
9 NONDISCLOSURE AGREEMENTS NOW, CIA, JUSTICE AND DEFENSE.

10 ADMINISTRATION OFFICIAL: WELL, IF I DID, I MADE A
11 MISTAKE. DEFENSE, AS I UNDERSTAND IT, DOES NOT HAVE
12 NONDISCLOSURE AGREEMENTS ACROSS THE BOARD NOW.

13 QUESTION: YOU MEAN ONLY IN PART?

14 ADMINISTRATION OFFICIAL: RIGHT. I THINK CERTAIN
15 COMPONENTS OF DEFENSE DO, NSA --

16 QUESTION: PART OF DEFENSE, SOME NSA AND SOME OF
17 DOJ AND, OF COURSE, CIA?

18 ADMINISTRATION OFFICIAL: YES.

19 QUESTION: THE NEW ONES WILL HAVE TO REQUIRE
20 PREPUBLICATION REVIEW WHICH WOULD ESTABLISH CIVIL LIABILITY.
21 HOW MANY CURRENTLY HAVE PREPUBLICATION REVIEW?

22 ADMINISTRATION OFFICIAL: THAT IS NOT EXACTLY RIGHT.

1 THE PREPUBLICATION REVIEW WOULD BE REQUIRED FOR EMPLOYEES
2 WHO ARE AUTHORIZED ACCESS TO SENSITIVE COMPARTMENTED INFOR-
3 MATION ONLY.

4 QUESTION: WHAT DOES THAT MEAN?

5 ADMINISTRATION OFFICIAL: THAT IS A KIND OF
6 CLASSIFIED INFORMATION WHICH IS GIVEN EXTRA LEVELS OF
7 PROTECTION BECAUSE IT MIGHT DISCLOSE INTELLIGENCE SOURCES
8 AND METHODS.

9 QUESTION: THE COMMUNICATIONS CATEGORY? WHAT
10 KIND OF CLASSIFICATION? YOU MEAN ABOVE TOP SECRET IN THE
11 COMMUNICATIONS CATEGORY?

12 ADMINISTRATION OFFICIAL: IT IS DESIGNATION THAT
13 IS GIVEN TO CLASSIFIED INFORMATION, IN ADDITION TO THE TOP
14 SECRET OR CONFIDENTIAL CLASSIFICATION, WHICH FURTHER COMPARTMENT
15 ITS ACCESS AND HAS SPECIAL PROTECTION.

16 QUESTION: IS THIS NSA INFORMATION, COMMUNICATIONS
17 INFORMATION?

18 ADMINISTRATION OFFICIAL: I CAN'T DESCRIBE EXACTLY
19 WHAT KIND OF INFORMATION IS SUBJECT TO THIS BUT IT'S A LONG-
20 STANDING PROGRAM IN THE GOVERNMENT. THE REFERENCE TO SCI
21 IS NO CHANGE. THAT'S AN EXISTING SYSTEM.

22 QUESTION: DOES ANYBODY IN THE AGRICULTURE

1 DEPARTMENT HAVE THAT KIND OF ACCESS?

2 ADMINISTRATION OFFICIAL: I DON'T KNOW.

3 QUESTION: BUT THE PREPUBLICATION REVIEWS, WHERE
4 DO THEY EXIST NOW?

5 ADMINISTRATION OFFICIAL: PREPUBLICATION REVIEW
6 PROCEDURES?

7 QUESTION: YES.

8 ADMINISTRATION OFFICIAL: I UNDERSTAND THAT CIA AND
9 NSA HAVE EXPRESS REGULATIONS ON THE SUBJECT. I'M NOT SURE
10 WHAT OTHER AGENCIES HAVE EXPRESS POLICIES ON PREPUBLICATION
11 REVIEW.

12 QUESTION: HOW ABOUT THE JUSTICE DEPARTMENT?

13 ADMINISTRATION OFFICIAL: THE JUSTICE DEPARTMENT
14 HAS ALWAYS VIEWED EMPLOYEES AS HAVING A FIDUCIARY OBLIGATION
15 UNDER THE SNEPP DECISION TO SUBMIT MATERIALS FOR PREPUBLICATION
16 REVIEW IN APPROPRIATE CASES. THERE ARE NO WRITTEN GUIDELINES
17 ON THAT.

18 QUESTION: WHO DO YOU SUBMIT THEM TO?

19 ADMINISTRATION OFFICIAL: TO DEPARTMENT OFFICIALS.

20 QUESTION: WHO? IF I WORKED FOR THE DEPARTMENT
21 OF JUSTICE AND I LEFT AND I WAS LIKE SNEPP, I WAS GONE, WHO
22 WOULD I SEND IT TO?

1 ADMINISTRATION OFFICIAL: THE OFFICE OF INTELLIGENCE
2 POLICY AND REVIEW.

3 QUESTION: HAS ANYBODY DONE THAT?

4 ADMINISTRATION OFFICIAL: YES. FORMER ATTORNEY
5 GENERAL GRIFFIN BELL DID.

6 QUESTION: HE'S THE ONLY ONE?

7 ADMINISTRATION OFFICIAL: I BELIEVE THERE HAVE BEEN
8 OTHER EXAMPLES BUT I'M NOT SURE.

9 QUESTION: HOW ABOUT THE GUY WHO IS WRITING A BOOK
10 ON THE NAZIS RIGHT NOW WHO WORKED FOR THE OFFICE OF
11 SPECIAL INVESTIGATIONS?

12 ADMINISTRATION OFFICIAL: I DON'T KNOW.

13 QUESTION: JOHN LOFTON?

14 ADMINISTRATION OFFICIAL: I DON'T KNOW WHAT HE MAY
15 HAVE DONE AND I ALSO DON'T KNOW WHETHER HE EVEN HAD ACCESS TO
16 CLASSIFIED INFORMATION.

17 QUESTION: WHAT IS THE CRITERIA FOR SERIOUSLY
18 DAMAGING INFORMATION?

19 ADMINISTRATION OFFICIAL: THAT'S UP TO EACH AGENCY
20 TO DETERMINE FOR ITSELF.

21 QUESTION: WHAT ARE THE CRITERIA? IS THERE NO
22 UNIFORM CRITERIA?

1 ADMINISTRATION OFFICIAL: IF YOU'RE REFERRING TO
2 PARAGRAPH 2.A OF THE DIRECTIVE, NO, THERE ARE NO UNIFORM
3 CRITERIA.

4 QUESTION: WELL, DOD MAY DECIDE IT'S GOT A HIGHER
5 CLASSIFICATION LEVEL THAN JUSTICE AND, THEREFORE, IF IT'S
6 LEAKED AT JUSTICE OR NSC, IT WOULD NOT BE CONSIDERED SUBJECT
7 TO INVESTIGATION, WHEREAS IF IT LEAKS IN ANOTHER AGENCY, IT
8 WOULD?

9 ADMINISTRATION OFFICIAL: WHAT THIS DOES IS IT
10 PERMITS THE AGENCIES TO DECIDE WHICH UNAUTHORIZED DISCLOSURES
11 ARE SERIOUS ENOUGH TO MERIT THIS KIND OF PRELIMINARY
12 INVESTIGATION. IT AVOIDS POSING A REQUIREMENT THAT EVERY
13 SINGLE DISCLOSURE RECEIVE A PRELIMINARY INVESTIGATION. THAT
14 IS SIMPLY A REITERATION OF WHAT IS CURRENT POLICY, THAT IS,
15 THAT AGENCIES HAVE THE DISCRETION TO TARGET THEIR RESOURCES
16 ON WHAT THEY CONSIDER TO BE THE MOST SERIOUSLY DAMAGING
17 UNAUTHORIZED DISCLOSURES.

18 NOW, MORE SPECIFICALLY THAN THAT I CAN'T SAY BECAUSE
19 IT'S UP TO EACH AGENCY TO EVALUATE IT.

20 QUESTION: CAN YOU SAY WHICH INCIDENTS SPARKED
21 CLARK'S INTEREST IN THIS SUBJECT?

22 ADMINISTRATION OFFICIAL: I CAN'T COMMENT ON ANY

1 INCIDENTS OF ALLEGED UNAUTHORIZED DISCLOSURE.

2 QUESTION: CAN YOU JUST CLARIFY WHAT YOU SAID
3 BEFORE? WHICH AGENCIES NOW REQUIRE EMPLOYEES TO SIGN NON-
4 DISCLOSURE AGREEMENTS, TO YOUR KNOWLEDGE?

5 ADMINISTRATION OFFICIAL: I CAN TELL YOU I KNOW THAT
6 CIA AND NSA DO. I KNOW THAT JUSTICE REQUIRES AN AGREEMENT OF
7 THIS KIND.

8 QUESTION: DO YOU ACTUALLY KNOW PEOPLE SIGN IT?
9 IS THERE AN ACTUAL FORM AT JUSTICE THAT PEOPLE SIGN?

10 ADMINISTRATION OFFICIAL: YES. I SIGNED AN
11 AGREEMENT PROMISING NOT TO DISCLOSE CLASSIFIED INFORMATION
12 WHEN I WAS GIVEN ACCESS TO IT.

13 QUESTION: EVERYBODY AT JUSTICE, OR ATTORNEYS AND
14 FBI?

15 QUESTION: THAT'S A LITTLE DIFFERENT THAN
16 PROMISING TO GIVE A PREPUBLICATION REVIEW.

17 ADMINISTRATION OFFICIAL: THERE ARE TWO DIFFERENT
18 PROVISIONS ON THIS. PARAGRAPH 1.A REQUIRES NONDISCLOSURE
19 AGREEMENTS FOR ALL EMPLOYEES WHO OBTAIN ACCESS TO CLASSIFIED
20 INFORMATION AS A CONDITION OF ACCESS. THAT KIND OF
21 NONDISCLOSURE AGREEMENT I SIGNED WHEN I GOT ACCESS TO
22 CLASSIFIED INFORMATION AT THE DEPARTMENT OF JUSTICE.

1 THE SECOND PARAGRAPH REQUIRES, FOR PEOPLE WITH
2 ACCESS TO SCI, THAT THEY SIGN A NONDISCLOSURE AGREEMENT AND
3 THAT, IN ADDITION, THOSE AGREEMENTS INCLUDE PROVISIONS FOR
4 PREPUBLICATION REVIEW, SO THOSE ARE THE TWO DIFFERENT LEVELS.

5 QUESTION: SO DID YOU SIGN A PREPUBLICATION REVIEW
6 FORM OR NOT?

7 ADMINISTRATION OFFICIAL: NO. AS FAR AS I UNDERSTAND
8 THE CURRENT JUSTICE DEPARTMENT NONDISCLOSURE AGREEMENT DOES
9 NOT INCLUDE PROVISIONS SPECIFICALLY INVOLVING PREPUBLICATION
10 REVIEW.

11 QUESTION: NOW IT WILL?

12 ADMINISTRATION OFFICIAL: AND NOW IT WILL.

13 QUESTION: AS OF WHEN? WHEN DOES THE DIRECTIVE
14 GO INTO EFFECT?

15 ADMINISTRATION OFFICIAL: AS SOON AS THE IMPLEMENTING
16 STEPS CAN BE TAKEN.

17 QUESTION: WHEN WILL THAT BE, TWO WEEKS, TEN DAYS,
18 WHAT ARE YOU TALKING ABOUT, HOW MUCH TIME?

19 ADMINISTRATION OFFICIAL: I DON'T KNOW. I'M SURE
20 IT WILL BE SOON.

21 QUESTION: NOW, CURRENT EMPLOYEES WHO ARE EMPLOYED
22 RIGHT NOW WILL RIGHT NOW BE REQUIRED TO SIGN AN AGREEMENT

1 WHICH AFFECTS THEM PROSPECTIVELY; IS THAT CORRECT?

2 ADMINISTRATION OFFICIAL: PARAGRAPH A, THE 1.A
3 NONDISCLOSURE AGREEMENT MAY BE IMPLEMENTED PROSPECTIVELY,
4 THAT IS, SOME AGENCIES, AND I'M THINKING HERE PARTICULARLY
5 OF THE DEPARTMENT OF DEFENSE WHICH IS SO LARGE, AGENCIES OF
6 THAT NATURE DO NOT HAVE TO GO BACK AND GET EVERY EMPLOYEE
7 WHO HAS ACCESS TO CLASSIFIED INFORMATION TO SIGN AN AGREEMENT,
8 JUST BECAUSE OF THE ADMINISTRATIVE BURDEN. EVERY NEW EMPLOYEE
9 OR CURRENT EMPLOYEE WHO NEWLY GETS ACCESS TO CLASSIFIED
10 INFORMATION WOULD HAVE TO SIGN AN AGREEMENT.

11 OTHER AGENCIES, AND I BELIEVE THIS WILL PROBABLY
12 INCLUDE THE DEPARTMENT OF JUSTICE, WILL GO BACK AND GET
13 EVERYONE, EVEN PEOPLE WHO CURRENTLY HAVE ACCESS, TO SIGN
14 NONDISCLOSURE AGREEMENTS.

15 QUESTION: AS OF THIS DATE?

16 ADMINISTRATION OFFICIAL: THE NONDISCLOSURE
17 AGREEMENT IS --

18 QUESTION: WHAT ABOUT THE PREPUBLICATION AGREEMENT?

19 ADMINISTRATION OFFICIAL: 1.B, PREPUBLICATION
20 REVIEW. IT'S OUR VIEW THAT CURRENT EMPLOYEES, EVEN THOUGH
21 THEY HAVE NOT SIGNED AN AGREEMENT THAT CONTAINS SPECIFIC
22 PROVISIONS, HAVE A FIDUCIARY OBLIGATION TO SUBMIT MATERIALS

1 FOR PREPUBLICATION REVIEW UNDER THE SNEPP DECISION EVEN
2 WITHOUT HAVING SIGNED A SPECIFIC AGREEMENT OUTLINING PROCEDURES
3 TO THAT EFFECT. HOWEVER, THIS DIRECTIVE REQUIRES THAT ALL
4 EMPLOYEES THAT HAVE ACCESS TO SCI SIGN AN AGREEMENT NOW THAT
5 THEY WILL SUBMIT ALL INFORMATION AND ALL MATERIALS.

6 QUESTION: WHEN YOU SAY CURRENT EMPLOYEES, DO YOU
7 MEAN CURRENT EMPLOYEES GOVERNMENT-WIDE?

8 ADMINISTRATION OFFICIAL: YES, THE 1.B PROVISION
9 APPLIES GOVERNMENT-WIDE.

10 QUESTION: HOW MANY EMPLOYEES ARE YOU TALKING ABOUT
11 HERE? HOW MANY PEOPLE ARE GOING TO HAVE TO SIGN SOMETHING?

12 ADMINISTRATION OFFICIAL: EMPLOYEES WITH ACCESS TO
13 SCI ARE A VERY SMALL FRACTION OF THE LARGER NUMBER OF EMPLOYEES
14 WHO HAVE ACCESS TO CLASSIFIED INFORMATION. SCI ACCESS IS
15 GIVEN OUT ONLY TO A HANDFUL OF EMPLOYEES. THE PRECISE
16 NUMBER I DON'T KNOW AND I'M NOT SURE THAT --

17 QUESTION: HUNDREDS, THOUSANDS?

18 ADMINISTRATION OFFICIAL: IT WOULD PROBABLY BE
19 CLASSIFIED. I THINK WITHIN THE DEPARTMENT OF JUSTICE,
20 EXCLUDING FBI, AND I'M NOT SURE WHAT THE NUMBERS THERE ARE,
21 ONE OR TWO HUNDRED EMPLOYEES OUT OF FIFTY THOUSAND WHO HAVE
22 ACCESS TO SCI.

1 QUESTION: CAN YOU DESCRIBE AGAIN EXACTLY WHAT
2 SCI IS?

3 ADMINISTRATION OFFICIAL: SCI IS INFORMATION WHICH,
4 IN ADDITION TO BEING CLASSIFIED TOP SECRET, SECRET OR
5 CONFIDENTIAL, IN ACCORDANCE WITH THE EXECUTIVE ORDER ON
6 CLASSIFICATION, IS GIVEN AN ADDITIONAL RESTRICTION ON
7 ACCESS OR A COMPARTMENTATION, AS WE CALL IT, TO PROVIDE AN
8 EXTRA LEVEL OF PROTECTION, AND MOSTLY IT'S INFORMATION THAT
9 WOULD DISCLOSE INTELLIGENCE SOURCES AND METHODS AND, THEREFORE,
10 IT'S DEEMED NECESSARY TO PROVIDE EXTRA PROTECTION IN ADDITION
11 TO CLASSIFYING IT.

12 QUESTION: HOW MANY EMPLOYEES HAVE ACCESS TO CLASSIFIED
13 INFORMATION IN THE GOVERNMENT?

14 ADMINISTRATION OFFICIAL: I'M SURE THAT'S A MUCH
15 LARGER NUMBER BUT I DON'T KNOW.

16 QUESTION: CAN YOU GIVE US A BALL PARK FIGURE?

17 ADMINISTRATION OFFICIAL: NO. I SUGGEST YOU TALK
18 TO STEVE GARFINKEL, WHO IS THE DIRECTOR OF ISOO, THE INFORMATION
19 SECURITY OVERSIGHT OFFICE, WHO HAS THE RESPONSIBILITY FOR
20 SUPERVISING THE CLASSIFICATION SYSTEM GOVERNMENT-WIDE.

21 QUESTION: AT GSA?

22 ADMINISTRATION OFFICIAL: AT GSA, YES. THERE ARE

1 FIGURES AND THEY CAN BE GIVEN BUT I JUST DON'T HAVE THEM.

2 QUESTION: APPROACHING IT ANOTHER WAY, CAN YOU TELL
3 US WHAT AGENCIES NOW WILL HAVE TO USE 1.A. AND/OR 1.B AGREEMENTS
4 THAT DON'T USE THEM NOW?

5 ADMINISTRATION OFFICIAL: I CAN'T SAY FOR SURE.
6 ONE PROBLEM WE HAVE IS THERE IS NO STANDARDIZED AGREEMENT.
7 EACH AGENCY CAN COME UP WITH ITS OWN FORMS IN 1.A.

8 QUESTION: CAN I ASK WHAT THE PURPOSE OF THIS
9 BRIEFING IS IF WE CAN'T FIND OUT AN ANSWER TO THAT? I MEAN,
10 YOU'RE ANNOUNCING A GOVERNMENT-WIDE POLICY AND IN ORDER FOR
11 US TO WRITE STORIES THAT MAKE ANY SENSE AT ALL WE SORT OF
12 NEED TO KNOW WHO HAS POLICIES LIKE THIS NOW AND WHO ARE GOING
13 TO BE CHANGING THEM.

14 ADMINISTRATION OFFICIAL: THERE ARE DOZENS OF
15 GOVERNMENT AGENCIES THAT HANDLE OR ORIGINATE CLASSIFIED
16 INFORMATION. THERE ARE, THEREFORE, DOZENS OF DIFFERENT
17 GOVERNMENT POLICIES WITH REGARD TO THESE MATTERS, AND I DO
18 NOT HAVE IN MY MIND A CATALOG OF WHAT ALL OF THEIR POLICIES
19 ARE. I TRIED TO GIVE YOU EXAMPLES OF THE LARGEST AGENCIES AND
20 HOW IT WOULD AFFECT THEIR OPERATIONS TO THE EXTENT I KNOW
21 THEM, BUT THERE ARE LITERALLY DOZENS OF AGENCIES THAT HAVE
22 POLICIES IN THESE AREAS.

1 QUESTION: YOU'VE GIVEN EXAMPLES OF PART OF
2 DEFENSE, ET CETERA THAT HAVE -- THERE'S NO UNIFORM GOVERNMENT-
3 WIDE POLICY AFFECTING DISCLOSURE.

4 ADMINISTRATION OFFICIAL: WELL, THERE IS A UNIFORM
5 GOVERNMENT-WIDE POLICY, EXECUTIVE ORDER 12356, GOVERNING
6 CLASSIFIED INFORMATION AND WHEN DISCLOSURE IS PROPER AND WHEN
7 IT ISN'T. THERE IS NO UNIFORM POLICY ON NONDISCLOSURE
8 AGREEMENTS.

9 QUESTION: NOW THERE IS.

10 ADMINISTRATION OFFICIAL: NOW THERE IS.

11 QUESTION: YOU SAY THERE ARE DOZENS OF AGENCIES
12 THAT HANDLE CLASSIFIED INFORMATION. HOW MANY MORE AGENCIES --
13 ARE THERE GOING TO BE NEW AGENCIES THAT FALL UNDER THESE
14 GUIDELINES NOW?

15 ADMINISTRATION OFFICIAL: NO. THESE GUIDELINES ONLY
16 APPLY TO AGENCIES THAT HANDLE CLASSIFIED INFORMATION NOW.

17 QUESTION: BUT, OBVIOUSLY, MANY MORE EMPLOYEES ARE
18 GOING TO HAVE TO SIGN AGREEMENTS.

19 ADMINISTRATION OFFICIAL: THAT'S RIGHT. MANY MORE
20 EMPLOYEES WILL HAVE TO SIGN AGREEMENTS AS A CONDITION FOR
21 ACCESS.

22 QUESTION: WHY DO YOU NEED THESE GUIDELINES?

1 ADMINISTRATION OFFICIAL: WITH REGARD TO THE
2 AGREEMENTS OR JUST AS A GENERAL MATTER?

3 QUESTION: WITH REGARD TO NONDISCLOSURE AGREEMENTS,
4 WITH REGARD TO PREPUBLICATION AGREEMENTS, WITH REGARD TO
5 CIRCUMSCRIBING MEDIA CONTACTS, WHY DO YOU NEED THESE THINGS?

6 ADMINISTRATION OFFICIAL: SPECIFICALLY WITH REGARD
7 TO NONDISCLOSURE AGREEMENTS, THE GUIDELINES DON'T REALLY
8 PROVIDE ANY ADDITIONAL RESPONSIBILITY FOR EMPLOYEES THAN THEY
9 ALREADY HAVE. IT IS ALREADY CONTRARY TO EXECUTIVE ORDER AND
10 STATUTES TO DISCLOSE CLASSIFIED INFORMATION WITHOUT
11 AUTHORIZATION. THE NONDISCLOSURE AGREEMENT DOESN'T CREATE A
12 DIFFERENT STANDARD OF CONDUCT FOR EMPLOYEES. WE THINK IT'S
13 A GOOD IDEA TO HAVE PEOPLE SIGN THEM, THOUGH, BECAUSE IT
14 REMINDS THEM OF THEIR RESPONSIBILITIES AND IT IMPROVES OUR
15 ABILITY TO ENFORCE THOSE RESPONSIBILITIES IN CIVIL LITIGATION
16 UNDER THE SNEPP DOCTRINE.

17 NOW, WE BELIEVE THOSE RESPONSIBILITIES ARE THERE AND
18 ARE ENFORCEABLE IN COURT UNDER THE SNEPP DOCTRINE EVEN WITHOUT
19 A SIGNED CONTRACT BUT WE THINK THAT THIS IS A PRUDENT
20 SECURITY MEASURE TO REMIND EMPLOYEES OF THEIR OBLIGATIONS TO
21 ACTUALLY HAVE THEM SIGN AN AGREEMENT TO THIS EFFECT RATHER
22 THAN TO RELY UPON REGULATIONS WHICH ALREADY IMPOSE THESE

1 REQUIREMENTS.

2 QUESTION: YOU WANT BOTH 1.A AND 1.B AGREEMENTS TO
3 BE ENFORCEABLE IN A CIVIL ACTION. IN 1.B WE'VE SEEN, IN
4 VIOLATION OF PREPUBLICATION REVIEW, YOU'VE GONE AFTER THE
5 PROFITS FROM A BOOK.

6 ADMINISTRATION OFFICIAL: YES.

7 QUESTION: WHAT KIND OF REMEDIES WOULD YOU SEEK FOR
8 A DISCLOSURE THAT DOESN'T HAVE ANYTHING TO DO WITH A PROFIT-
9 MAKING BOOK?

10 QUESTION: COULD I ASK YOU TO FINISH YOUR ANSWER,
11 PLEASE?

12 ADMINISTRATION OFFICIAL: MY ANSWER OF WHAT?

13 QUESTION: WHY YOU NEED THESE THINGS. WAS THERE A
14 BURST OF DISCLOSURE THAT REQUIRES YOU TO MAKE PEOPLE SIGN
15 THESE THINGS? ARE YOU TRYING TO PUT A CHILL THROUGH THE
16 GOVERNMENT TO KEEP PEOPLE'S MOUTHS SHUT BECAUSE OF INCREASING
17 AMOUNTS OF DISCLOSURE?

18 ADMINISTRATION OFFICIAL: WE'RE TRYING TO DEVELOP
19 A MORE EFFECTIVE MEANS OF ENFORCING EXISTING LAWS THAT
20 PROHIBIT THE UNAUTHORIZED DISCLOSURE OF CLASSIFIED INFORMATION.
21 I'M NOT GOING TO COMMENT ON ANY SPECIFIC INCIDENTS OF
22 UNAUTHORIZED DISCLOSURE, AS I SAID EARLIER.

1 QUESTION: HAVE THERE BEEN A NUMBER OF THEM, THOUGH,
2 THAT HAVE CAUSED YOU WORRY?

3 ADMINISTRATION OFFICIAL: THERE HAVE BEEN A NUMBER
4 OVER A LONG PERIOD OF TIME. IT'S NOT A NEW PROBLEM, AS I
5 THINK YOU'RE ALL AWARE, BUT IT'S BEEN A PERSISTENT AND
6 SERIOUS PROBLEM.

7 QUESTION: WE KNOW THAT WHEN YOU'VE GONE INTO
8 COURT FOR VIOLATION OF PREPUBLICATION YOU SOUGHT PROFITS.
9 WHAT WOULD REMEDY FOR JUST DISCLOSURE WHERE THERE WASN'T A
10 PROFIT-MAKING SITUATION? WHAT WOULD YOU ASK THE COURT TO DO?

11 QUESTION: FOR INSTANCE, A LEAK TO A NEWSPAPER.

12 QUESTION: YES. IF SOMEBODY LEAKED A SENSITIVE
13 DOCUMENT TO A NEWSPAPER AND DIDN'T MAKE ANY MONEY OFF IT?

14 ADMINISTRATION OFFICIAL: UNDER THOSE CIRCUMSTANCES
15 THERE PROBABLY IS NOTHING THAT WE CAN DO. HOWEVER, FOR
16 EXAMPLE, IF SOMEONE DISCLOSED CLASSIFIED INFORMATION IN A
17 PUBLICATION AND MADE A PROFIT, WE COULD SEEK TO DO THAT.
18 WE MIGHT BE ABLE TO OBTAIN AN INJUNCTION AGAINST FUTURE
19 DISCLOSURES SUCH AS HAS BEEN OBTAINED UNDER THE SNEPP
20 DOCTRINE FOR PEOPLE WHO DISCLOSE CLASSIFIED INFORMATION IN
21 VIOLATION OF THEIR OBLIGATION.

22 QUESTION: THESE GUIDELINES SEEM TO INVEST A GREAT

1 DEAL OF DISCRETION AND AUTHORITY IN THE HEAD OF THE EXECUTIVE
2 BRANCH AGENCY. IS AN INSTRUCTION TO TAKE A LIE DETECTOR TEST
3 IN ANY WAY APPEALABLE OR REVIEWABLE BY ANYBODY ELSE? WHAT
4 DOES AN EMPLOYEE DO IF THEY DON'T WANT TO TAKE THAT TEST?
5 HE SAYS "I DON'T WANT TO TAKE IT, I THINK YOU'RE BEING
6 UNREASONABLE," WHO DOES HE GO TO?

7 ADMINISTRATION OFFICIAL: WELL, THE HEAD OF THE
8 AGENCY WOULD BE THE ATTORNEY GENERAL OR THE DIRECTOR OF
9 CENTRAL INTELLIGENCE AND THE ONLY PERSON WHO IS HIGHER THAN
10 THEM IN OUR GOVERNMENT IS THE PRESIDENT, SO I GUESS HE COULD
11 GO TO THE PRESIDENT. VESTING DISCRETION WITH THE HEADS OF
12 AGENCIES IS NOT SOMETHING NEW ABOUT THIS DIRECTIVE. THAT'S
13 THE WAY THE SYSTEM CURRENTLY OPERATES. THIS DIRECTIVE
14 CONTINUES THAT BASIC POLICY, AND THAT IS THAT THE HEAD OF AN
15 AGENCY IS RESPONSIBLE FOR SAFEGUARDING NATIONAL SECURITY
16 INFORMATION WITHIN HIS AGENCY AND THAT CONTINUES.

17 QUESTION: WELL, IN ONE SECTION HERE YOU'RE
18 TALKING ABOUT SERIOUSLY DAMAGING AN AGENCY'S MISSION AND
19 RESPONSIBILITIES. WHAT ARE YOU TALKING ABOUT BY THAT, MISSION?

20 ADMINISTRATION OFFICIAL: WELL, I THINK I TRIED TO
21 SAY EARLIER THAT THAT LANGUAGE IS SIMPLY TO AVOID AN
22 IMPLICATION THAT EVERY DISCLOSURE OF CLASSIFIED INFORMATION

1 HAS TO BE PUT THROUGH THE PROCESS DESCRIBED IN PARAGRAPH TWO
2 OF PRELIMINARY INVESTIGATION. AGENCIES CAN TARGET THEIR
3 RESOURCES ON THE ONES THAT THEY THINK ARE THE MOST SERIOUS
4 AND I DON'T THINK THERE'S ANY MAGIC IN THE PARTICULAR LANGUAGE
5 WE USE THERE, BUT IT IS UP TO THE AGENCY THAT ORIGINATES THE
6 CLASSIFIED INFORMATION TO EVALUATE THE SERIOUSNESS OF THE
7 DISCLOSURE TO DECIDE WHETHER IT'S APPROPRIATE TO GO FORWARD
8 WITH ADDITIONAL STEPS.

9 QUESTION: I WANT TO TRY ONE MORE STAB AT WHY
10 YOU'RE DOING THIS. I KNOW THE WORDS YOU GAVE BUT LET ME
11 GIVE YOU A DEFINITION, YOU TELL ME WHETHER THIS IS WRONG.
12 YOU'VE NEVER HAD A SUCCESSFUL PROSECUTION OF SOMEBODY WHO
13 VIOLATED THE CLASSIFIED DISCLOSURE STATUTE, RIGHT? YOU'VE
14 NEVER BEEN ABLE TO CONVICT ANYBODY FOR A NUMBER OF PRACTICAL
15 REASONS?

16 ADMINISTRATION OFFICIAL: THAT IS CORRECT.

17 QUESTION: THEREFORE, WHAT YOU DO IS YOU CAN'T GO
18 TO COURT AND GET A CONVICTION AND RATHER THAN GOING BACK TO
19 CAPITOL HILL AND GETTING A LAW THAT MAYBE YOU COULD ENFORCE,
20 YOU'RE GOING TO, IN EFFECT, MAKE YOUR OWN LAW ADMINISTRATIVELY
21 AND DISCIPLINE THESE PEOPLE ADMINISTRATIVELY AND YOU'RE
22 GOING TO PUNISH THEM ADMINISTRATIVELY WITHOUT GOING TO

1 CONGRESS AND GETTING A LAW TO DO IT THROUGH A CRIMINAL
2 LAWSUIT SO YOU CAN PUNISH THEM SOMEHOW AND YOU CAN'T DO IT
3 THROUGH THE LAW, YOU'RE NOT GOING TO TRY FOR A NEW LAW, YOU'RE
4 GOING TO USE IT --

5 ADMINISTRATION OFFICIAL: I DON'T WANT TO AGREE WITH
6 EXACTLY THE WAY YOU'RE WORDED IT BUT I WILL SAY THAT WE HAVE
7 DECIDED IN A WAY TO LOWER OUR SIGHTS. FOR MANY YEARS THE
8 GOVERNMENT HAS HAD A TOTALLY INEFFECTIVE PROGRAM OF ENFORCING
9 THE LAWS AGAINST UNAUTHORIZED DISCLOSURES OF CLASSIFIED
10 INFORMATION AND THE REASON IS THE GOVERNMENT HAS PURSUED THE
11 ILLUSORY GOAL OF CRIMINAL CONVICTION. THIS DIRECTIVE
12 RECOGNIZES THAT Milder SANCTIONS, ADMINISTRATIVE, PERHAPS AS
13 MILD AS SIMPLY DENYING FURTHER ACCESS TO CLASSIFIED INFORMATION,
14 IF IMPOSED SUCCESSFULLY AND MORE FREQUENTLY, ARE A MUCH BETTER
15 DETERRENT FOR THIS UNLAWFUL CONDUCT THAN THE THEORETICAL BUT
16 NEVER ACHIEVED POSSIBILITY OF A CRIMINAL CONVICTION.

17 QUESTION: WHY DON'T YOU SEND UP A NEW BILL TO THE
18 HILL WITH Milder SANCTIONS IN THE LAW RATHER THAN THE
19 GUIDELINES?

20 ADMINISTRATION OFFICIAL: CURRENT LAW ALREADY
21 PROVIDES FOR THE SANCTIONS. THE EXECUTIVE ORDER HAS ALWAYS
22 PROVIDED THAT ADMINISTRATIVE SANCTIONS SHALL BE TAKEN AGAINST

1 PEOPLE WHO DISCLOSE CLASSIFIED INFORMATION WITHOUT
2 AUTHORIZATION. WHAT WE HAVE ATTEMPTED TO DO IS MATCH THE
3 ENFORCEMENT SYSTEM TO THE LAW SO THAT THE ENFORCEMENT SYSTEM
4 CAN BE MORE EFFECTIVE THAN IT HAS BEEN IN THE PAST.

5 QUESTION: WHAT ARE THE PRACTICAL DIFFICULTIES?
6 YOU MENTIONED IN THE BACKGROUNDER THAT THERE ARE A NUMBER OF
7 PRACTICAL BARRIERS TO SUCCESSFUL CRIMINAL PROSECUTION.

8 ADMINISTRATION OFFICIAL: YES. ONE PROBLEM IS
9 THAT A CRIMINAL PROSECUTION TAKING PLACE IN COURT IN PUBLIC
10 BEFORE A JURY REQUIRES DISCLOSURE OF THE CLASSIFIED INFORMATION
11 ITSELF AND CONFIRMATION OF ITS ACCURACY, AND, AS I JUST SAID
12 EARLIER, THAT COMPOUNDS THE DAMAGE TO NATIONAL SECURITY AND,
13 THEREFORE, THAT IS ONE PRACTICAL BARRIER THAT MAY EXIST TO A
14 CRIMINAL PROSECUTION.

15 ANOTHER REASON IS THE REQUIREMENT, AGAIN, AS I
16 SAID BEFORE, DESCRIBING WHY THE INFORMATION DAMAGED NATIONAL
17 SECURITY OR HOW IT MAY REQUIRE ADDITIONAL CLASSIFIED INFORMATION
18 BE DISCLOSED, AND THEN FINALLY THERE'S THE GREYMAIL.
19 AND WHILE THE CLASSIFIED INFORMATION PROCEDURES ACT, TO
20 SOME EXTENT, IMPROVES THE GOVERNMENT'S ABILITY TO BRING
21 CRIMINAL PROSECUTIONS IN THESE CASES, THERE STILL IS A
22 PROBLEM THERE. SO THOSE BARRIERS WOULD EXIST EVEN IF

1 CONGRESS DID ADOPT A NEW LAW PROVIDING DIFFERENT KINDS OF
2 SANCTIONS.

3 QUESTION: DON'T YOU ALSO HAVE TO PROVE INTENT TO
4 HARM THE UNITED STATES, TOO? ISN'T THAT ALSO A PROBLEM?
5 MR. COLBY USED TO SAY THAT WAS A PROBLEM, YOU COULDN'T
6 ESTABLISH THE INTENT BECAUSE YOU ONLY HAVE THE ESPIONAGE
7 STATUTE, RIGHT?

8 ADMINISTRATION OFFICIAL: THAT'S NOT THE ONLY
9 STATUTE WE HAVE. YOU'RE RIGHT, UNDER THE ESPIONAGE STATUTE
10 THERE IS A (INAUD.) OR SORT OF A REQUIREMENT. THERE ARE OTHER
11 STATUTES THAT MAY BE APPLICABLE, DEPENDING ON THE CIRCUMSTANCES,
12 AND I CAN GIVE YOU THE CITATIONS IF YOU WANT. THERE'S
13 18 USC 798, WHICH DEALS WITH COMMUNICATIONS INTELLIGENCE.
14 THERE IS THE ATOMIC ENERGY ACT, WHICH DEALS WITH RESTRICTED
15 DATA UNDER THE ATOMIC ENERGY ACT, AND THERE IS 50 USC 783 B
16 WHICH INCLUDES DISCLOSURE TO FOREIGN AGENTS, AND THERE IS
17 ALSO 18 USC 641, THEFT OF GOVERNMENT PROPERTY, ALTHOUGH THAT,
18 OF COURSE, ITSELF HAS SOME KIND OF INTENT REQUIREMENT BUT
19 IT'S NOT EXACTLY THE SAME AS THE ESPIONAGE LAW. SO YOU'RE
20 PARTLY RIGHT BUT THERE ARE SO MANY DIFFERENT POSSIBLE
21 CRIMINAL STATUTES THAT YOU CAN'T SAY THAT THAT'S TRUE IN
22 EVERY SINGLE CASE.

1 QUESTION: WHAT WOULD HAPPEN IF THE CLASSIFIED
2 INFORMATION, SAY, ORIGINATED IN THE DEFENSE DEPARTMENT AND
3 THERE WAS A LEAK OF IT WHICH YOU SUSPECTED MIGHT BE ON THE
4 HILL OR IT MIGHT BE AT THE NSC? DOES THE ORIGINATING AGENCY,
5 IS IT ABLE TO SAY THAT LIE DETECTOR TESTS MUST BE TAKEN BY
6 THOSE PEOPLE THAT MIGHT INCLUDE THE PRESIDENT'S COUNSELORS?

7 ADMINISTRATION OFFICIAL: THE DIRECTIVE PROVIDES
8 THAT THAT WOULD BE THE EMPLOYEE'S AGENCY HEAD, NOT THE HEAD
9 OF THE AGENCY THAT ORIGINATED THE CLASSIFIED INFORMATION, SO
10 THAT THE DIRECTIVE DOES REQUIRE IN PARAGRAPH 2.D THAT
11 RECIPIENT AGENCIES COOPERATE WITH ORIGINATING AGENCIES IN
12 CONDUCTING INTERNAL INVESTIGATIONS. BUT THE DECISIONS WITH
13 REGARD TO THE POLYGRAPH AS PROVIDED IN PARAGRAPH 5 ARE ALL
14 ONES OF THE AGENCY HEAD, AND BY THAT I MEAN THE HEAD OF THE
15 AGENCY THAT EMPLOYS THE INDIVIDUAL IN QUESTION.

16 QUESTION: THEN IT WOULD BE THE ADVISOR'S DECISION,
17 NSC ADVISOR CLARK'S DECISION, WHETHER OR NOT ONE OF HIS
18 PEOPLE WOULD BE REQUIRED TO TAKE THE POLYGRAPH TEST FOR
19 INFORMATION ORIGINATING IN THE CIA OR DOD?

20 ADMINISTRATION OFFICIAL: WELL, I DON'T KNOW. AT
21 THE WHITE HOUSE I ASSUME THE PRESIDENT IS THE HEAD OF THE
22 AGENCY THERE BUT I UNDERSTAND IMPLEMENTATION AT THE WHITE HOUSE

1 WOULD BE SUPERVISED BY THE CHIEF OF STAFF. HOW THEY WOULD
2 FURTHER PROVIDE FOR IT, I DON'T KNOW ABOUT THAT.

3 QUESTION: WHAT OTHER AGENCIES BESIDES CIA, NSA
4 AND JUSTICE HAVE POLYGRAPH POLICIES NOW?

5 ADMINISTRATION OFFICIAL: IT'S A COMPLICATED
6 QUESTION. I DO KNOW THAT OPM HAS A REGULATION THAT GOVERNS
7 POLYGRAPH WITH REGARD TO EMPLOYEES IN THE COMPETITIVE
8 SERVICE. DEPARTMENT OF DEFENSE HAS REGULATIONS ON THE
9 SUBJECT.

10 QUESTION: WHAT IS EMPLOYEES COMPETITIVE SERVICE,
11 WHAT DOES THAT MEAN?

12 ADMINISTRATION OFFICIAL: IT'S A WORD OF ART.
13 UNDER THE CIVIL SERVICE LAWS, ESSENTIALLY IT MEANS CIVIL
14 SERVICE LAWYERS AS OPPOSED TO SCHEDULE A, SCHEDULE C OR SOME
15 OF THE OTHER SPECIALIZED EMPLOYMENT SYSTEMS.

16 QUESTION: SO OPM IS THE ONLY OTHER AGENCY WITH
17 A POLYGRAPH POLICY?

18 ADMINISTRATION OFFICIAL: BUT OPM'S POLICY APPLIES
19 THROUGHOUT THE GOVERNMENT TO AGENCIES THAT HAVE EMPLOYEES IN
20 THE COMPETITIVE SERVICE, CIVIL SERVICE EMPLOYEES.

21 QUESTION: DO YOU KNOW OF POLYGRAPHS BEING GIVEN,
22 LET'S SAY IN THE LAST FIVE YEARS, ANYWHERE EXCEPT CIA AND NSA?

1 ADMINISTRATION OFFICIAL: YES.

2 QUESTION: AND HERE?

3 ADMINISTRATION OFFICIAL: YES.

4 QUESTION: WHERE ELSE?

5 ADMINISTRATION OFFICIAL: THEY WERE GIVEN AT JUSTICE
6 UNDER CIVILETTI.

7 QUESTION: WHERE ELSE?

8 ADMINISTRATION OFFICIAL: THEY HAVE BEEN GIVEN AT
9 DEFENSE.

10 QUESTION: WHERE ELSE? ANYPLACE ELSE?

11 ADMINISTRATION OFFICIAL: I DON'T KNOW.

12 QUESTION: BUT THIS NOW WOULD BE GOVERNMENT-WIDE,
13 ANY AGENCY PRESUMABLY INCLUDING THE AGRICULTURE DEPARTMENT
14 IF IT RECEIVED ANY CLASSIFIED INFORMATION, LET'S SAY, ABOUT
15 SOVIET CROPS, THAT ALSO COULD BE SUBJECT TO --

16 ADMINISTRATION OFFICIAL: WELL, I'M NOT SURE THAT
17 I UNDERSTAND THE QUESTION: YOU ASKED WHERE THE POLYGRAPH
18 HAD BEEN GIVEN. THIS DIRECTIVE DOES NOT REQUIRE ANY AGENCY TO
19 GIVE THE POLYGRAPH IN ANY PARTICULAR CASE.

20 QUESTION: BUT IT ALLOWS THEM TO.

21 ADMINISTRATION OFFICIAL: WHAT IT DOES, IT REQUIRES
22 AGENCIES TO REMOVE IMPEDIMENTS THAT WOULD PRECLUDE THEM FROM

1 GIVING THE POLYGRAPH, IT DOESN'T REQUIRE THEM TO GIVE THE
2 POLYGRAPH. I REALIZE THAT'S A LEGAL DISTINCTION BUT THE
3 DISTINCTION IS THAT THE REGULATIONS THAT NOW PRECLUDE USE
4 OF THE POLYGRAPH WOULD HAVE TO BE MODIFIED AT LEAST TO THE
5 LIMITED EXTENT HERE, AND IF I COULD JUST CONTINUE, NO ONE
6 HAS BROUGHT THIS OUT, BUT THERE ARE A NUMBER OF ADDITIONAL
7 LIMITATIONS IN PARAGRAPH 5.

8 FOR EXAMPLE, IT PROVIDES THAT THE EXAMINATIONS CAN
9 BE LIMITED TO THE CIRCUMSTANCES OF THE UNAUTHORIZED DISCLOSURE
10 UNDER QUESTION AND NOT EXTENDING TO LIFESTYLE TYPE QUESTIONS
11 THAT EMPLOYEES FIND OFFENSIVE. IN OTHER WORDS, THE QUESTIONING
12 CAN BE LIMITED STRICTLY TO THE FACTS AND CIRCUMSTANCES OF THE
13 UNAUTHORIZED DISCLOSURE.

14 IT ALSO PROVIDES THAT THE AGENCY HEAD OR SOMEONE
15 DESIGNATED BY HIM IS THE ONLY PERSON WHO CAN MAKE A DECISION
16 ON WHETHER AN EMPLOYEE WOULD BE ORDERED TO TAKE A POLYGRAPH
17 EXAMINATION.

18 QUESTION: IN REGARD TO THAT, IF YOU DIDN'T LIKE THE
19 QUESTIONS THAT WERE ASKED OF YOU AND YOU THOUGHT THEY
20 EXCEEDED THE MANDATE, WHO WOULD YOU COMPLAIN TO OTHER THAN
21 THE AGENCY HEAD? WOULD YOU HAVE ANY RECOURSE?

22 ADMINISTRATION OFFICIAL: WELL, THE DIRECTIVE SETS

1 A MINIMUM STANDARD WITHIN THE GOVERNMENT. AGENCIES ARE FREE
2 TO ADOPT THEIR OWN POLICIES THAT ARE DIFFERENT FROM THAT THAT
3 EXCEED THE MINIMUM STANDARD, SO THAT'S WHY I SUPPOSE THE
4 AGENCY HEAD WOULD BE THE PERSON THAT YOU WOULD APPEAL TO.

5 QUESTION: WHAT I'M ASKING YOU IS IF I AM BROUGHT IN
6 AND THEY THINK THAT I DISCLOSED SOME CLASSIFIED INFORMATION
7 AND THEY ASKED ME, BY THE WAY, IF I'VE SLEPT WITH FIVE
8 DIFFERENT MEN THIS WEEK AND I THINK THAT'S OUTSIDE THE
9 MANDATE, WHO DO I COMPLAIN TO OTHER THAN THE DIRECTOR OF MY
10 AGENCY? SUPPOSING HE SAYS, "WELL, I THINK THAT'S RELEVANT."
11 DO I HAVE ANYBODY TO COMPLAIN TO?

12 ADMINISTRATION OFFICIAL: THERE IS NO CURRENT
13 PROHIBITION ON THE ASKING OF A BROAD RANGE OF QUESTIONS TO
14 EMPLOYEES. FOR EXAMPLE, CIA AND NSA REGULARLY POLYGRAPH
15 EMPLOYEES AND DO ASK THEM QUESTIONS ABOUT VULNERABILITY TO
16 BLACKMAIL AND OTHER SUBJECTS THAT ARE RELEVANT TO GIVING
17 SECURITY CLEARANCES, SO WHEN YOU SAY WHAT SHOULD I COMPLAIN
18 ABOUT, THERE'S NO EXISTING GOVERNMENT POLICY THAT PRECLUDES
19 USE OF THE POLYGRAPH TO EXTEND TO LIFESTYLE TYPE QUESTIONS IF
20 RELEVANT TO GRANTING A SECURITY CLEARANCE. WHAT THIS DOES IS
21 IT CHANGES THE MINIMUM FLOOR OF GOVERNMENT REGULATIONS ON A
22 POLYGRAPH TO REQUIRE AS A MINIMUM THAT AN AGENCY AT LEAST

1 HAS TO AMEND ITS REGULATIONS SO AS TO PERMIT QUESTIONING
2 LIMITED TO THE SCOPE OF THE UNAUTHORIZED DISCLOSURE UNDER
3 QUESTION. SO THAT THE HYPOTHETICAL YOU'VE GIVEN COULD BE A
4 VIOLATION OF THE AGENCY'S OWN REGULATION AS YOU POSE IT, AND,
5 IF SO, OF COURSE, IT'S THE AGENCY'S RESPONSIBILITY TO
6 ENFORCE ITS REGULATIONS, YOU MAY HAVE OTHER PROCEDURAL
7 REMEDIES THAT WOULD APPLY UNDER THE CIRCUMSTANCES.

8 QUESTION: WHAT PROCEDURAL REMEDIES ARE YOU
9 TALKING ABOUT?

10 ADMINISTRATION OFFICIAL: WELL, AN EMPLOYEE GRIEVANCE
11 A COLLECTIVE BARGAINING AGREEMENT. THERE ARE DIFFERENT
12 KINDS OF EMPLOYEES THROUGHOUT THE GOVERNMENT IN DIFFERENT
13 SYSTEMS, BUT THOSE ARE THE KINDS OF REMEDIES THAT WOULD BE
14 AVAILABLE IF THE AGENCY CHOOSES TO ADOPT A REGULATION THAT
15 WOULD LIMIT THE SCOPE OF POLYGRAPH EXAMINATIONS IN THAT WAY.

16 QUESTION: BUT THAT IS NOT NECESSARY.

17 ADMINISTRATION OFFICIAL: IT'S NOT NECESSARY.

18 QUESTION: YOU SAID IT COULD BE A VIOLATION, IN
19 OTHER WORDS, NSA AND CIA COULD STILL ASK THE KIND OF QUESTIONS
20 THAT SHE WAS TALKING ABOUT.

21 ADMINISTRATION OFFICIAL: NSA AND CIA DO AND HAVE
22 BEEN FOR YEARS AND STILL COULD.

1 QUESTION: AND STILL COULD EVEN UNDER THESE?

2 ADMINISTRATION: RIGHT. THIS CREATES A MINIMUM
3 STANDARD USE OF THE POLYGRAPH, IT DOES NOT LIMIT THE WAY THAT
4 CIA OR NSA OR ANY OTHER AGENCY THAT CHOSE TO WOULD USE THE
5 POLYGRAPH.

6 QUESTION: WOULD YOU SAY I'M OVERSTATING IT TO SAY
7 THAT THIS IN SOME WAY IS INVITING OTHER AGENCIES TO JOIN
8 THE CIA AND NSA?

9 ADMINISTRATION OFFICIAL: I THINK YOU WOULD BECAUSE
10 WHAT THIS DOES, IT HAS NO EFFECT ON THE USE OF THE POLYGRAPH
11 TO ASK LIFESTYLE QUESTIONS. IT DOES NOT REQUIRE AGENCIES THAT
12 DON'T USE THE POLYGRAPH FOR CLEARANCES --

13 QUESTION: I'M NOT ASKING ABOUT A REQUIREMENT,
14 I'M ASKING ABOUT IN REALITY, WHEN YOU ISSUE NEW REGS LIKE
15 THIS, YOU REQUIRE POLICIES ON POLYGRAPHS, DON'T YOU THINK
16 THAT THAT'S SORT OF AN INDICATION?

17 ADMINISTRATION: NO, IN FACT I THINK JUST THE
18 OPPOSITE. BY SETTING FORTH THE LIMITATION THAT'S IN HERE, I
19 THINK THE DIRECTIVE ENCOURAGES AGENCIES TO LIMIT THEIR USE
20 OF THE POLYGRAPH TO THE CIRCUMSTANCES OF UNAUTHORIZED
21 DISCLOSURES AND NOT TO GO FURTHER BECAUSE THIS REGULATION
22 IS CAREFULLY DRAWN IN THAT MANNER.

1 QUESTION: DOES THE EXISTING OPM GOVERNMENT-WIDE
2 POLYGRAPH REGULATION ALLOW AN ADVERSE INFERENCE FROM REFUSAL?

3 ADMINISTRATION OFFICIAL: NO, IT DOES NOT. THE
4 EXISTING OPM REGULATION THAT APPLIES TO EMPLOYEES IN THE
5 COMPETITIVE SERVICE PROVIDES THAT TAKING THE POLYGRAPH HAS TO
6 BE COMPLETELY VOLUNTARY. THAT HAS BEEN INTERPRETED TO MEAN
7 THAT IF SOMEONE IS ASKED TO TAKE A POLYGRAPH AND REFUSES TO
8 DO SO, YOU CAN'T EVEN WRITE IT DOWN AND PUT IT IN THE
9 INVESTIGATORY FILE AND YOU CANNOT USE IT AS THE BASIS FOR
10 DRAWING ANY KIND OF EVIDENTIARY INFERENCE. THAT IS, YOU HAVE
11 TO FORGET THAT IT EVER HAPPENED. THIS REGULATION MODIFIES
12 THAT TO SAY THAT YOU DON'T HAVE TO FORGET IT EVER HAPPENED,
13 BUT IT DOESN'T SPECIFICALLY REQUIRE THAT ANY OTHER RESULT
14 HAPPENED.

15 QUESTION: ARE THERE ANY AGENCIES THAT EITHER
16 INITIATE OR HANDLE CLASSIFIED INFORMATION THAT DON'T HAVE
17 ANY POLICIES THAT REGULATE MEDIA CONTACTS?

18 ADMINISTRATION OFFICIAL: I THINK THAT VERY FEW
19 AGENCIES HAVE POLICIES IN THIS AREA, INCLUDING AGENCIES THAT
20 HANDLE CLASSIFIED INFORMATION.

21 QUESTION: IS THE IDEA BEHIND 1.D TO ENCOURAGE
22 AGENCIES AND EMPLOYEES SPECIFICALLY WHO HANDLE CLASSIFIED

1 INFORMATION TO AVOID OR RESTRICT THEIR CONTACT WITH THE
2 PRESS?

3 ADMINISTRATION OFFICIAL: NO, NOT AT ALL. THE IDEA
4 IS THAT THE POLICIES SHOULD BE CONSIDERED, THERE SHOULD BE
5 POLICIES, EMPLOYEES SHOULD BE APPRISED OF THEM. THE IDEA IS
6 TO DISCOURAGE EMPLOYEES FROM DISCLOSING CLASSIFIED INFORMATION
7 TO THE PRESS AND THERE IS NO INTENT TO ENCOURAGE EMPLOYEES TO
8 AVOID DISCLOSING OTHER INFORMATION THAT IS UNCLASSIFIED.

9 IN FACT, THE PRESIDENT'S DIRECTIVE MAKES IT CLEAR
10 IN THE INITIAL PARAGRAPH THAT EVERY EFFORT SHOULD BE MADE TO
11 DECLASSIFY INFORMATION THAT NO LONGER REQUIRES PROTECTION
12 AND THE ATTORNEY GENERAL'S MEMORANDUM INTERNALLY WITHIN THE
13 DEPARTMENT OF JUSTICE ALSO EMPHASIZES THAT, WHEREVER POSSIBLE,
14 INFORMATION SHOULD BE KEPT UNCLASSIFIED OR DECLASSIFIED SO AS
15 TO PERMIT PUBLIC ACCESS.

16 QUESTION: NOW, THERE'S NO GOVERNMENT AGENCY THAT
17 HAS A POLICY OF ENCOURAGING PEOPLE TO DECLASSIFY INFORMATION
18 EXCEPT OCCASIONALLY AT THE WHITE HOUSE. WHITE HOUSE OFFICIALS
19 GIVE OUT CLASSIFIED INFORMATION (INAUDIBLE), BUT OTHER
20 THAN THAT, THERE'S NO GOVERNMENT-WIDE POLICY TO ENCOURAGE
21 THAT SO WHY DO WE NEED THIS? COULD YOU GIVE ME AN IDEA AS
22 TO WHAT WOULD BE AN APPROPRIATE POLICY TO DISCOURAGE SOMEBODY

1 LOG BOOKS, REPORTING EVERY TIME THERE'S A CONTACT WITH A
2 REPORTER, OR WHAT?

3 ADMINISTRATION OFFICIAL: THE KIND OF POLICIES YOU
4 DESCRIBED ARE IN PLACE IN VARIOUS AGENCIES. THE REASON THAT
5 THIS LEAVES IT UP TO THE AGENCY'S DISCRETION IS THAT
6 GOVERNMENT AGENCIES ARE DIFFERENT. THE CIA, FOR EXAMPLE, HAS
7 EMPLOYEES, EVERY ONE OF WHICH DEALS ALL DAY LONG WITH
8 CLASSIFIED INFORMATION. THEIR POLICIES ARE ONE MATTER. IN
9 THE JUSTICE DEPARTMENT, FOR EXAMPLE, MOST EMPLOYEES RARELY, IF
10 EVER, DEAL WITH CLASSIFIED INFORMATION AND IT WOULDN'T BE
11 APPROPRIATE FOR US TO HAVE THE SAME KIND OF POLICY CIA HAS
12 ON MEDIA CONTACTS. HOWEVER, WE MAY WANT TO ADOPT POLICIES,
13 SAY, THAT WOULD PROVIDE THAT AREAS WHERE CLASSIFIED INFORMATION
14 IS USED WOULD NOT BE MADE ACCESSIBLE TO UNCLEARED PERSONNEL
15 OR SOMETHING OF THAT NATURE.

16 QUESTION: THAT'S A POLICY NOW, ISN'T IT?

17 ADMINISTRATION OFFICIAL: THERE IS NO FORMAL
18 POLICY IN THE DEPARTMENT OF JUSTICE WITH REGARD TO CONTACTS.

19 QUESTION: I COULD BARGE INTO THE FOREIGN INTELLIGENCE
20 COURT UP THERE ON THE ROOF, THERE'S NO POLICY THAT WOULD PREVENT
21 ME FROM DOING THAT, (INAUDIBLE) WIRETAP APPLICATIONS?

22 ADMINISTRATION OFFICIAL: THERE ARE POLICIES THAT

1 UNAUTHORIZED PEOPLE SHOULD NOT BE PERMITTED ACCESS TO
2 CLASSIFIED INFORMATION BUT THERE ARE NOT ANY POLICIES THAT
3 GOVERN CONTACTS BETWEEN MEDIA REPRESENTATIVES AND EMPLOYEES
4 WHO HAVE ACCESS TO CLASSIFIED INFORMATION.

5 QUESTION: YOU DON'T KNOW WHAT THOSE POLICIES WOULD
6 BE, THOUGH?

7 ADMINISTRATION OFFICIAL: IT'S GOING TO BE LEFT
8 UP ON AN AGENCY BASIS. SOME OF THE THINGS YOU MENTIONED ARE
9 POLICIES THAT COULD BE ADOPTED AND HAVE BEEN ADOPTED IN THE
10 PAST.

11 QUESTION: YOU'RE UNDOUBTEDLY GOING TO BE INVOLVED
12 IN JUSTICE'S VERSION OF THESE.

13 ADMINISTRATION OFFICIAL: YES.

14 QUESTION: WHAT OTHER ONES BESIDES RESTRICTED AREAS
15 IS JUSTICE CONSIDERING?

16 ADMINISTRATION OFFICIAL: NO DECISION HAS BEEN MADE
17 ON THAT AT THE DEPARTMENT OF JUSTICE. WHATEVER POLICIES
18 EXIST WOULD PROBABLY BE LIMITED TO THOSE EMPLOYEES WHO
19 REGULARLY DEAL WITH CLASSIFIED INFORMATION RATHER THAN
20 BEING APPLIED TO OTHER EMPLOYEES.

21 QUESTION: ARE YOU CONSIDERING A MANDATORY LOG OF
22 MEDIA CONTACTS? ARE YOU CONSIDERING MANDATORY MONITORING

1 OF THE INTERVIEW BY A PUBLIC AFFAIRS OFFICER OR WHAT THINGS
2 ARE POSSIBLE?

3 ADMINISTRATION OFFICIAL: NO DELIBERATIONS HAVE
4 BEGUN ON WHAT POLICIES WE'LL ADOPT, AS FAR AS I KNOW, TO BE
5 ADOPTED AT THE DEPARTMENT OF JUSTICE.

6 QUESTION: IS THERE ANY REASON WHY THIS BRIEFING
7 WAS HELD AT 3:00 ON FRIDAY AFTERNOON?

8 ADMINISTRATION OFFICIAL: THE PRESIDENT SIGNED THE
9 DIRECTIVE THIS MORNING AND MY SECRETARY WAS TYPING THE
10 FACT SHEET UNTIL ABOUT 2:55 IN AN EFFORT TO GET ALL OF THE
11 MATERIAL ASSEMBLED AND OUT, AND I THINK THAT I HAVE BEEN
12 WORKING NON-STOP ON THIS PROJECT SINCE THE PRESIDENT SIGNED
13 IT THIS MORNING AND TRYING TO GET THE MATERIAL OUT BUT IT
14 TAKES SOME TIME.

15 QUESTION: THERE WAS NO CONSCIOUS DECISION TO HOLD
16 IT ON FRIDAY AFTERNOON, IS THAT WHAT YOU'RE SAYING?

17 ADMINISTRATION OFFICIAL: THE DECISION WAS TO
18 RELEASE IT AS SOON AS WE COULD AFTER THE PRESIDENT SIGNED
19 IT AND THAT'S WHAT WE DID.

20 QUESTION: IS THIS CONSIDERED A NATIONAL SECURITY
21 DECISION DIRECTIVE, WHAT THE PRESIDENT SIGNED? DOES THIS
22 HAVE A NUMBER?

1 ADMINISTRATION OFFICIAL: IT DOES, I DON'T KNOW
2 WHAT THAT NUMBER IS. WELL, I DON'T THINK IT YET HAS A NUMBER.

3 QUESTION: CAN YOU RUN DOWN THE AGENCIES THAT HAVE
4 POLYGRAPH POLICIES RIGHT NOW?

5 ADMINISTRATION OFFICIAL: YOU MEAN EITHER WAY?

6 QUESTION: WELL, RIGHT NOW.

7 ADMINISTRATION OFFICIAL: EITHER PERMITTING OR
8 PROHIBITING A POLYGRAPH?

9 QUESTION: ALLOWING POLYGRAPH.

10 ADMINISTRATION OFFICIAL: I KNOW THAT CIA AND NSA,
11 WHICH ARE TWO LARGEST AGENCIES, REGULARLY USE THE POLYGRAPH
12 BOTH FOR CLEARANCES AS WELL AS FOR INVESTIGATIONS WITH THE
13 EXCEPTION THAT NSA DOES NOT USE IT FOR MILITARY PERSONNEL, IT
14 USES IT FOR CIVILIAN PERSONNEL AT NSA. CIA USES IT, I
15 UNDERSTAND, FOR BOTH CIVILIAN AND MILITARY PERSONNEL. AS
16 FAR AS I KNOW, THOSE ARE THE ONLY AGENCIES THAT REGULARLY
17 USE THE POLYGRAPH FOR GRANTING SECURITY CLEARANCES, THAT IS,
18 EVERY EMPLOYEE IS POLYGRAPHED.

19 I'M NOT SURE WHAT THE CURRENT DEPARTMENT OF
20 DEFENSE REGULATIONS PROVIDE. I KNOW THERE ARE REGULATIONS ON
21 THE SUBJECT, SOME OF THEM WERE REVISED WITH REGARD TO
22 EMPLOYEES HAVING ACCESS TO SCI, I THINK, LAST SUMMER, BUT I'M

1 NOT PRECISELY SURE WHAT THEY PROVIDE NOW. THE DEPARTMENT OF
2 JUSTICE HAS ESSENTIALLY THE SAME POLICY AS THE PRESIDENT'S
3 DIRECTIVE PROVIDES FOR ITS ATTORNEYS AND FOR FBI PERSONNEL.

4 AS FAR AS I KNOW, THE REST OF THE GOVERNMENT EITHER
5 HAS NO POLICY OR FOLLOWS THE OPM POLICY, WHICH I'VE ALREADY
6 DESCRIBED WHICH, OF COURSE, IN AND OF ITSELF APPLIES TO ALL
7 EMPLOYEES IN THE COMPETITIVE SERVICE.

8 QUESTION: CAN YOU RUN DOWN WHICH AGENCIES NOW HAVE
9 PREPUBLICATION DISCLOSURE?

10 ADMINISTRATION OFFICIAL: AS FAR AS I KNOW, NSA AND
11 CIA ARE THE ONLY AGENCIES THAT HAVE FORMAL REGULATIONS
12 ON PREPUBLICATION DISCLOSURE AND I'VE ALREADY DESCRIBED
13 WHAT THE JUSTICE DEPARTMENT POLICY IS WITH REGARD TO ITS
14 EMPLOYEES, BUT THAT POLICY IS NOT PART OF A WRITTEN AGREEMENT
15 OR PUBLISHED REGULATIONS AT THIS POINT.

16 QUESTION: WHO NOW WOULD HAVE TO BE ADDED TO THAT
17 LIST? WHERE IS SCI THAT WOULD NOW HAVE TO HAVE THAT?

18 ADMINISTRATION OFFICIAL: SCI IS USED BY PEOPLE AT
19 A LARGE NUMBER OF AGENCIES BUT USUALLY ONLY A HANDFUL OF
20 PEOPLE AT EACH AGENCY.

21 QUESTION: WHAT ARE SOME OF THE AGENCIES? ENERGY,
22 SURELY?

1 ADMINISTRATION OFFICIAL: I WOULD ASSUME THERE ARE
2 PEOPLE AT ENERGY.

3 QUESTION: THEY DO BUILD NUCLEAR WEAPONS.

4 ADMINISTRATION OFFICIAL: OF COURSE, THEY HAVE THEIR
5 OWN, NUCLEAR INFORMATION IS UNDER THE RESTRICTED DATA PROGRAM
6 WHICH IS SOMEWHAT DIFFERENT. IT'S PROVIDED FOR IN THE ATOMIC
7 ENERGY ACT. I REALLY THINK STEVE GARFINKEL AT ISOO COULD
8 GIVE YOU A MORE ACCURATE ANSWER TO THAT QUESTION. I'M NOT
9 TRYING TO AVOID IT, I JUST DON'T KNOW.

10 QUESTION: I JUST WANT TO FOLLOW UP TO THE QUESTION
11 BEFORE, THAT YOU TRIED, YOU'VE BEEN WORKING TO GET THIS
12 INFORMATION OUT TO US AS SOON AS YOU COULD AND YOU HAD NO
13 REASON TO WANT IT LATE ON A FRIDAY AFTERNOON. WAS THE
14 PRESIDENT'S SIGNATURE ON THIS DOCUMENT TIMED ESPECIALLY SO
15 THAT WE WOULD BE GETTING IT LATE IN THE AFTERNOON ON A
16 FRIDAY? I DON'T MEAN TO RESTRICT IT TO THAT BUT TO MAKE IT
17 ON A FRIDAY SO IT WOULD APPEAR IN A SATURDAY PAPER?

18 ADMINISTRATION OFFICIAL: I'M NOT AWARE THAT THE
19 STAFFING PROCESS ON THIS WAS IN ANY WAY ALTERED. I THINK
20 THE PROCESS MOVED TO ITS CONCLUSION WITH THE PRESIDENT'S
21 SIGNATURE AND THAT THERE WAS NO EFFORT TO HAVE THE PRESIDENT
22 SIGN IT ON ONE DAY OF THE WEEK RATHER THAN ANOTHER. I THINK

1 THE IDEA WAS TO GET IT DONE AS SOON AS POSSIBLE, AND ONCE THE
2 PRESIDENT SIGNED IT, THEN WE HAVE RELEASED IT QUICKLY
3 THEREAFTER.

4 QUESTION: AGAIN, YOU SAY WE COULD GET SPECIFIC
5 FIGURES. WOULD YOU THINK IT'S SAFE TO SAY THAT THIS WOULD
6 COVER THOUSANDS OF FEDERAL EMPLOYEES?

7 ADMINISTRATION OFFICIAL: OH, IT CERTAINLY WOULD.
8 PARTS OF IT WOULD. NOW THE SCI ACCESS PROVISION WOULD COVER
9 A MUCH SMALLER NUMBER.

10 QUESTION: BUT THAT'S SCI AS WELL AS THE OTHER
11 CLASSIFICATIONS, RIGHT, CLASSIFIED INFORMATION?

12 QUESTION: POLYGRAPH, FOR INSTANCE, AUTHORIZATION.

13 ADMINISTRATION OFFICIAL: YES.

14 QUESTION: PEOPLE WHO HAVE ACCESS TO OTHER CLASSIFIED
15 INFORMATION.

16 ADMINISTRATION OFFICIAL: YES.

17 QUESTION: SO IT'S THOSE FOUR CLASSIFICATIONS?

18 ADMINISTRATION OFFICIAL: WELL, I REALIZE IT'S
19 PRETTY TECHNICAL. ALL SCI IS ALSO CLASSIFIED AS ONE OF THE
20 THREE CATEGORIES OF CLASSIFIED INFORMATION, IT JUST HAS
21 ADDITIONAL RESTRICTIONS ON IT. SOME PEOPLE ARE DESCRIBED AS
22 JUST BEING A SUPER CLASSIFICATION BUT AS A TECHNICAL MATTER

1 IT IS CLASSIFIED AT ONE OF THE THREE LEVELS AND THEN IT HAS
2 AN EXTRA LIMITATION.

3 QUESTION: SO NOW ANYBODY WITH ACCESS TO CLASSIFIED
4 INFORMATION HAS TO SIGN THIS PREPUBLICATION AGREEMENT?

5 ADMINISTRATION OFFICIAL: NO, THAT'S NOT TRUE.
6 1.B ONLY APPLIES TO THOSE WHO HAVE ACCESS TO SCI.

7 QUESTION: WELL, IT SAYS OR OTHER CLASSIFIED
8 INFORMATION.

9 ADMINISTRATION OFFICIAL: NO. WHAT IT SAYS IS
10 THAT IF SOMEONE WHO HAS ACCESS TO SCI SIGNS THE AGREEMENT
11 THAT THE AGREEMENT WILL ASSURE THAT BOTH SCI AND CLASSIFIED
12 INFORMATION IS DELETED FROM THE PUBLICATION, THAT IS, IF I
13 HAVE ACCESS TO CLASSIFIED INFORMATION AND I WRITE A BOOK AND
14 I SUBMIT IT FOR REVIEW, THEY CAN TAKE OUT BOTH THE SCI AND THE
15 OTHER CLASSIFIED INFORMATION AS PART OF THE PREPUBLICATION
16 REVIEW.

17 QUESTION: BUT SOMEBODY WHO ONLY HAS ACCESS TO
18 CLASSIFIED INFORMATION.

19 ADMINISTRATION OFFICIAL: THAT'S RIGHT. THE VAST
20 MAJORITY OF GOVERNMENT EMPLOYEES WHO HAVE ACCESS TO CLASSIFIED
21 INFORMATION DO NOT HAVE ACCESS TO SCI AND, THUS, WILL NOT BE
22 AFFECTED BY 1.B.